

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	
Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1/6/2/4 GHz Bands)	IB Docket No. 02-364
)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems)	ET Docket No. 00-258
)	

To: The Commission

**OPPOSITION TO PETITIONS FOR RECONSIDERATION
CATHOLIC TELEVISION NETWORK AND NATIONAL ITFS ASSOCIATION**

The Catholic Television Network ("CTN") and the National ITFS Association ("NIA"), by their attorneys, hereby submit this Opposition to Petitions for

Reconsideration filed with respect to the *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order* (“2006 Order”) in the above captioned matter.¹

I. Grandfathered E and F Group Licensees

CTN and NIA oppose the petitions for reconsideration filed by NY3G Partnership (“NY3G”) and NextWave Broadband, Inc. (“NextWave”) concerning the resolution of situations where grandfathered E and F group Educational Broadband Service (“EBS”) licensees have service area overlaps of greater than 50% with co-channel Broadband Radio Service (“BRS”) licensees. The Commission ruled that in cases where there is a service area overlap that is greater than 50%, there will be a 90-day mandatory negotiation period beginning on the effective date of the new rules where both sides will have a duty to accommodate each other’s communications requirements.² If the parties do not reach an agreement after 90 days, the Commission will “split the football on its own accord.”³

NY3G wants the Commission to adopt a rule that would result in the “EBS licensee obtaining the high-power channel and one low-power channel and the BRS licensee obtaining two low-power channels.”⁴ NextWave suggests an approach whereby

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order (“2006 Order”), 21 FCC Rcd 5606 (2006).

² 2006 Order at ¶ 350, 21 FCC Rcd at 5750.

³ *Id.* The Commission observed that its decision permits grandfathered E and F channel EBS licensees, which have been providing service for many years, to modernize their systems to better serve the public. *Id.* at ¶ 354, 21 FCC Rcd at 5751.

⁴ NY3G Petition for Reconsideration filed July 19, 2006 at 3.

the population within the overlap area would provide the basis upon which channels would be divided among the licensees.⁵

There is no need or basis for the Commission to amend the split-the-football rule as suggested by NY3G or NextWave. The rule is fair and received the support of virtually all commenting parties except NY3G.⁶ While the options put forward by NY3G and NextWave might be appropriate for parties to consider voluntarily during the 90-day negotiation process, there is no reason for the Commission to change its default split-the-football rule.

II. Auction of Unassigned BRS and EBS Spectrum

NextWave also seeks reconsideration of the FCC's determination not to proceed at this time with auctioning of unassigned BRS and EBS spectrum, urging instead that the Commission move forward with auctions immediately and that, with respect to vacant EBS spectrum, the auctions take place on the basis of BTAs, with the BTA license granting rights to all available EBS spectrum in the BTA, subject to rights of incumbents.⁷ CTN and NIA oppose this suggestion. While there likely will be substantial demand for vacant EBS spectrum in some areas, the Commission should wait until at least 2008 to conduct an EBS auction. EBS licensees will be significantly

⁵ NextWave Petition for Reconsideration filed July 19, 2006 at 13-15.

⁶ *See, e.g.*, Reply Comments of the Wireless Communications Association International ("WCAI") filed February 8, 2005 at 33-34 ("[T]he record overwhelmingly supports the adoption of the proposals advanced by WCA and NIA/CTN, among others, for addressing the licensing of grandfathered EBS E and F Group licensees and those BRS lottery winners with overlapping protected service areas"); Reply Comments of Nextel Communications, Inc. filed February 8, 2005 at 13 ("the Commission should use the 'splitting-the-football' approach recommended in the Coalition Proposal and adopted in the BRS/EBS Report and Order"). Other supporters included Clearwire Corporation, Stanford University, the School Board of Miami Dade County, and the Reply Comments filed February 8, 2005 by EBS Parties, licensees of 17 grandfathered E/F group stations that "vigorously oppose the self-serving position of NY3G..." NextWave did not file comments or reply comments addressing this issue.

⁷ NextWave Petition for Partial Reconsideration filed July 19, 2006, at 9-11.

occupied with other matters over the next few years, including transitions to the new band plan, spectrum lease negotiations, and critically, the development of educational service plans that focus on new technologies tailored to the revised band plan and rules.

CTN and NIA agree that EBS spectrum auctions should proceed on the basis of Basic Trading Areas (“BTAs”). However, this must be done on a channel-group-by-channel-group basis, with LBS/UBS channels treated separately from MBS channels, an approach that has been previously supported by the WCAI, Sprint, Nextel, Clearwire, and others.⁸ Separating channel groups within a BTA for auction will allow EBS license holders of particular channel groups in nearby areas to extend their services geographically, without having to bid on channel groups that they do not want or need. Likewise, separating low-power LBS/UBS channels from high-power MBS channels allows EBS licensees whose focus is only on two-way data services, or only on video services, to acquire the spectrum they need, without having to bid on spectrum they do not need.

III. Issues Raised by WCAI

CTN and NIA support the positions taken by WCAI on the following issues which are of particular concern to EBS licensees:

- (i) that the deadline in Section 27.1236(b)(6) for self-transitioning EBS licensees should be conformed to the deadline established for proponent-driven transitions;
- (ii) that Section 27.1214 relating to equipment acquisition provisions in EBS excess capacity lease arrangements be modified to permit the sale or lease of “comparable equipment;”
- (iii) that EBS licensees with highly truncated GSAs (those less than 1924 square

⁸ See, e.g., Joint Comments of the Catholic Television Network and the National ITFS Association filed January 10, 2005; Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. filed on January 10, 2005.

miles in size) will be deemed to have provided substantial service where the licensee satisfies one of the other safe harbors in its former PSA, even if a safe harbor cannot be achieved in the GSA at issue; and

(iv) that the Commission require the use of great ellipses so as to take into account the curvature of the Earth's surface when establishing GSAs.

In addition, CTN and NIA support WCAI's position that Section 27.55(a)(4)(iii) should be amended to permit EBS operation in the MBS in accordance with pre-transition parameters, even if those facilities exceed the post-transition signal strength limit at the GSA boundary. However, CTN and NIA suggest that the rule proposed by WCAI be clarified to reflect that this grandfathering of signal levels applies only to the licensees' pre-transition operations (including modifications to those facilities). Certainly EBS licensees must have the ability to continue providing the services they provided pre-transition. But, an EBS licensee's GSA should not be subject to interference from an adjacent market licensee even after that adjacent market licensee has discontinued its pre-transition operations and converted to cellular, low-power operations similar to those provided in the LBS or UBS. To address this issue, CTN and NIA suggest the following revision to WCAI's proposed Section 27.55(a)(4)(iii):

Following transition, for stations in the MBS, the signal strength at any point along the licensee's GSA boundary must not exceed the greater of (a) $-73.0 + 10\log(X/6)$ dBW/m², where X is the bandwidth in MHz of the channel, or (b) for facilities that are substantially similar to the licensee's pre-transition facilities (including modifications), the signal strength at such point that resulted from the station's operations immediately prior to the transition, provided that such operations comported with § 27.55(a)(4)(i).

IV. Issues Raised by HITN

CTN and NIA support the positions taken by the Hispanic Information and Telecommunications Network ("HITN") on the following issues:⁹

⁹ Petition for Further Reconsideration and Request for Clarification of Hispanic Information and Telecommunications Network filed July 19, 2006.

(i) that the FCC's position on term limits of grandfathered EBS leases (those entered into prior to the adoption of the new rules on January 10, 2005) should be clarified, so that such leases cannot now be interpreted, as a result of provisions contemplating increases in lease terms commensurate with changes in FCC rules, to permit lease terms that will run in perpetuity;

(ii) that Section 27.1201(a) relating to eligibility for holding EBS licenses be modified to remove a clearly outdated reference to the provision of "instructional television material" as a predicate to a non-profit educational organization's eligibility; and

(iii) that the FCC require MVPDs seeking an opt-out waiver to provide (1) a considerably greater showing with respect to effects on neighboring EBS stations and other potentially affected parties, (2) justifications for causing otherwise impermissible interference to others who are transitioning, (3) mitigation of any such interference, (4) information about MVPD current operations supporting its eligibility for a waiver, and (5) statements of consent from all licensees participating in the waiver.

V. Conclusion

CTN and NIA urge the Commission to reconsider and/or clarify the *2006 Order* consistent with the foregoing.

Respectfully submitted,

CATHOLIC TELEVISION NETWORK

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CERTIFICATE OF SERVICE

I, Shelia Wright, hereby certify that copies of the foregoing OPPOSITION TO PETITIONS FOR RECONSIDERATION have been served via electronic mail or first class mail this 18th day of August, 2006 on the following:

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